Supreme Court, U. S.
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No. 75-510

In the Supreme Court of the United States

OCTOBER TERM, 1975

FLINT RIDGE DEVELOPMENT COMPANY,
Petitioner,

v.

THE SCENIC RIVERS ASSOCIATION OF OKLAHOMA AND THE ILLINOIS RIVER CONSERVATION COUNCIL,
Respondents.

ANSWER TO PETITION OF FLINT RIDGE DEVELOPMENT COMPANY FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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ANSWER TO PETITION OF FLINT RIDGE DEVELOPMENT COMPANY FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Respondents, The Scenic Rivers Association of Oklahoma and the Illinois River Conservation Council, respectfully pray that this Court deny the Petitioner's request for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

I

JURISDICTION

Respondents deny that this Court has jurisdiction.

On September 6, 1974, Flint Ridge Development Company filed its Notice of Appeal (R. p. 711) which

stated as follows:

> "Notice is hereby given that Flint Ridge Development Company, Intervening Defendant in the above entitled case, hereby appeals to the United States Court of Appeals for the Tenth Circuit from an Order issuing a preliminary injunction restraining the Intervening Defendant from either selling or developing its property located in Delaware County, Oklahoma, known as "Flint Ridge" pending the preparation and filing of an Environmental Impact Study by the Defendants, James T. Lynn, Secretary of Housing and Urban Development, and George K. Bertstein, Administrator of the Office of Interstate Land Sales Registration, said Order being entered on the 4th day of September, 1974."

No such order exists as referred to in the Notice of Appeal; and, therefore, there is no jurisdiction on review. *Smith v. U.S.* (CA 9, 1959) 272 F.2d 288, cert. den. 362 U.S. 954.

II
QUESTIONS PRESENTED

Respondents disagree with the "Questions Presented" set forth in the Petitioner's Petition for Writ of Certiorari.

1. Respondents do not agree that the Department of Housing and Urban Development's authority is "limited to checking to determine whether the statement appears to be complete and accurate on its face." As shown herein, the Department has authority to require disclosures not only for the protection of the purchaser

but also for the protection of the public interest. The Department has strong regulatory and policing powers in connection with the Interstate Land Sales Act.

2. Respondents disagree with the second question presented by Petitioner in that there is no absolute requirement under the Interstate Land Sales Act that a registration statement become effective 30 days after filing. In the first place there are no facts to support this conclusion in the record. The facts are to the contrary because the Statement of Record and Property Report submitted initially by Flint Ridge Development Company was in fact suspended for a period of approximately 90 days. Finally the issue fails to disclose the possibilities for being innovative which are available to the Department of Housing and Urban Development (HUD) and which are required under the National Environmental Policy Act (NEPA).

Therefore, Respondents submit that the issues presented to the Trial Court and to the Circuit Court of Appeals, and which were addressed and ruled upon by these respective courts, are as follows:

(1) Whether *under the facts* of the case—facts which conclusively demonstrate significant actual and potential environmental degradation—the Department of Housing and Urban Development must comply with the National Environmental Policy Act and prepare an environmental impact statement.

(2) Whether HUD is exempt from the standards and mandates of NEPA.

(3) Whether HUD is bound by its own rules, policies and procedures.

III
STATEMENT OF THE CASE

Respondents submit that the Statement of the Case is inaccurate and incomplete in several respects. Paragraph 1, in which the Petitioner says that the Secretary of Housing and Urban Development made a "determination" is incorrect. In response to a request by the President of the Illinois River Conservation Council a letter was received from Mr. Meeker, a copy of which is reproduced as Appendix A.

HUD at that time still had no rules with respect to protection and enhancement of the environment as required by the National Environmental Policy Act but was operating under what they refer to as Department Handbook 1390.1. Pertinent portions of the Handbook are reproduced as Appendix B. It provides in part:

> "Finding of inapplicability (negative statement). A determination by an authorized HUD official under the authority of the HUD Guidelines approved by CEQ which are issued in accordance with the CEQ Guidelines implementing HEPA, that no Environmental Impact Statement is required for the proposed HUD action under consideration. The

> Finding of Inapplicability for project level actions is a part of the Special Environmental Clearance. The format for the Finding of Inapplicability for policy actions is set forth in Appendix F."

The Handbook provides that determinations are made as part of the special environmental clearance procedures and under certain formats more particularly specified in the Handbook. Handbook 1390.1, Chapter 1, Part 2(i), 38 F.R. 19182. Section 50.3(i) of the Proposed Rules reiterates the provisions of the Handbook.

The next inaccuracy is the assertion that the Statement of Record filed under the Interstate Land Sales Act (ILSA) "automatically" becomes effective 30 days after filing. This is factually inaccurate in this situation before the Court; and, further, does not conform with the Statute inasmuch as the Secretary has wide discretion to suspend before the 30 days. Nor must the Statement of Record appear to be fraudulent to be suspended under either the Statute or HUD rules. 15 U.S.C. §§ 1705 (12), 1706(a)(d), 1707(a). See also 24 CFR. 1700.80, 1710.45, 1710.105 and 1710.110.

In fact § 1706(d), the citation referred to by the Petitioner, specifically provides that the Secretary may suspend for omission any material fact required to be stated. Under Section 1706(b) of the Interstate Land Sales Act, the Secretary has the authority to suspend until "such additional information as the Secretary shall

require" be provided. The Secretary under that section is authorized to suspend when the Statement of Record is "incomplete or inaccurate in any material respect".

On p. 4 of the Petition in the next to last paragraph the Petitioner suggests that much occurred prior to the filing under the Interstate Land Sales Act. It should be noted that only a minor portion of the activities were underway prior to the filing. In fact the Petitioner owned 7,000 acres and only a portion thereof was being developed under a phase development procedure. Secondly, the developer had another 14,000 acres under option. Finally, much of the roads, the water supply and all of the construction activities and other forms of problems that would occur in the future were yet to be realized and would not be realized until such time as the sales had occurred and other people had become involved. (See Transcript, R. 489, 503, 504, 518).

Flint Ridge dismisses contemptuously the real facts of this case by a footnote on p. 5. *Significantly, the Findings of Fact supporting the environmental degradation are not appealed from nor seriously challenged by Flint Ridge or by the Government in this case.* Thus, it is important to bear in mind that the Trial Court found as a matter of fact that the development will, actually or potentially, result in the total destruction of the Illinois River Basin. The facts as adduced at trial clearly reveal

both actual and potential substantial effects on the quality of the human environment. That there will be substantial impact on the environment has *never* been controverted on appeal and as an issue before this Court remains uncontroverted.

The river involved is a scenic river both in fact and in law. It has been designated for study for inclusion into the National Wild and Scenic Rivers System and is a State designated scenic river (Finding No. 10 of the Trial Court, R. p. 689). See also Findings of Fact and Law generally, R. p. 689 and following.

These Findings establish that the effects of the development include effects on the depth and course of the river, its tributaries, drainage area, the plant life, the wildlife habitats, fish and wildlife, soils, air, esthetics of the area and upon the socio-economic conditions of the area, including such matters as health, hospital care facilities, roads and highways, schools, and police and fire protection.

In summary this is a situation in which the Federal Defendant has absolutely refused to comply with the National Environmental Policy Act (a "serious dereliction of duty," Finding No. 13, R. p. 689). As a result of that refusal, the Government has created a situation in which, as a result of development on the river, there is actual and potential threat of total environmental

degradation to this river and to this vital public resource.

The Respondents therefore respectfully submit the following argument and authorities in opposition to the Petition of Flint Ridge Development Company for a Writ of Certiorari.

IV
SUMMARY OF ARGUMENT

1. HUD must comply with the mandates of NEPA whenever its action, or action it permits other parties to take, causes or induces a significant effect on the quality of the human environment.

2. ILSA neither prohibits nor makes compliance with NEPA impossible.

Superimposed upon the grant of authority to HUD to regulate interstate land sales is a Congressional mandate contained in NEPA and this gives specific content to HUD's authority under ILSA to require disclosure of environmental information in the public interest in the form of an environmental impact statement. ILSA and NEPA are full disclosure statutes which complement each other.

3. It does not foster the purposes of NEPA or make any sense to find federal action minor when the environmental effects of agency action, or action it permits private parties to take, is substantial.

Major federal action is a mixed question of law and

fact. One test for major federal action is whether, as a result of federal action, a private party is permitted to undertake environmental degradation; and, if so, such action is major.

4. Petitioner has failed to promote any of the considerations contained in Rule 19 of the Rules of the United States Supreme Court.

5. For the first time on appeal Petitioner raises the issue of effect upon the industry as a whole.

There is no evidence in the record to support this argument and it was not raised in the Courts below. Nevertheless, there is no major affect upon the industry as a whole. In any event such an issue is one more properly presented to Congress than to the Court.

V
REASONS FOR DENYING THE WRIT

1. The District Court and the Court of Appeals correctly ruled that NEPA applies to all federal actions which have a reasonably substantial relationship to the quality of the human environment, whether that action consists of direct federal impact on the environment, or actions taken by other persons which will have a substantial environmental impact, and for which federal permission is required, or which sets into motion the environmental degradation.

The Federal Courts unanimously agree that the Federal Government under NEPA is required to prepare adquate environmental information bases before it acts however slight its role. *Calvert Cliffs Coordinating Committee v. A.E.C.* (C.A.D.C., 1971) 449 F.2d 1109; *Minnesota Public Interest Research Group v. Butz* (C.A., 8, 1974) 498 F.2d 1314; *National Forest Preservation Group v. Butz* (C.A. 9, 1973) 485 F.2d 408; *Wyoming Outdoor Coordinating Council v. Butz* (C.A. 10, 1973) 484 F.2d 1244; *Davis v. Morton* (C.A. 10, 1972) 469 F.2d 593; *National Helium Corp. v. Morton* (C.A. 10, 1971) 455 F.2d 650; *Scientists Institute for Public Information, Inc. v. A.E.C.* (C.A.D.C. 1973) 481 F.2d 1079; *Simmans v. Grant* (S.D. Tex., 1974) 370 F. Supp. 5; and *Ely v. Velde* (C.A. 4, 1971) 451 F.2d 1130; *Chelsea Neighborhood Association v. U.S. Postal Service* (D.C. N.Y. 1975) ___ F. Supp. ___, 7 ERC 1707. Flint Ridge's argument completely ignores the second portion of the test set forth in the National Environmental Policy Act. Simply stated, that is that when there is a significant effect, a matter of fact which is unappealed from, Federal action, by its very nature, becomes major.

2. Since compliance with N.E.P.A. by HUD, as the administering agency under ILSA, is not prohibited by statute nor impossible, then the decisions of the courts below are correct in all respects.

Flint Ridge argues that by requiring an environmental impact statement of HUD for a project on the Illinois River, the decisions of the lower courts frustrate the scheme of ILSA and conflict with existing case law. As the Tenth Circuit stated in its opinion, "we regard this as superficial." Petitioner relies on a nonexistent holding in *S.C.R.A.P. v. U.S.* (1973) 412 U.S. 669 to support its claim that by ordering HUD to comply with NEPA the Courts have in effect repealed or amended ILSA. This is nonsense.

The issue in *S.C.R.A.P.* I was not whether there was general judicial power in a Federal District Court to determine if a Federal agency has complied with NEPA and to grant equitable relief if it has not, but rather whether, "in a specific context NEPA sub silentio *revived judicial powers* that have been explicitly eliminated by Congress" 412 U.S. 669, 696 (emphasis added).

S.C.R.A.P. I dealt with a unique situation concerning a specific statute which restricted the power of the Federal Courts to grant injunctions, and not the general applicability of NEPA to actions by Federal agencies which have impact on the environment or permit private parties to take action which will have an impact. In the context of the case Petitioners ask this Court to review, *S.C.R.A.P.* I is totally irrelevant.

The second *S.C.R.A.P.* case is *Aberdeen and Rock-*

fish Railroad Co. v. S.C.R.A.P. (1975)____ U.S. ____, 45 L.Ed.2d 191. Implicit in this Court's review of the sufficiency of the ICC's compliance with NEPA is this Court's recognition of the applicability of NEPA to even the ICC.

This Court also stated that the unique procedure of a general revenue proceeding under ICC was major federal action thereby requiring compliance with NEPA so long as the proceeding had a substantial effect upon the environment. This instructs us that the matter of Federal action and effect upon the environment are intertwined and that there are not really two tests but a mixed test. *Rucker v. Willis* (C.A. 4, 1973) 484 F.2d 158 and *Wyoming Outdoor Coordinating Council v. Butz* (C.A. 10, 1973) 484 F.2d 1244.

Under the facts of this case, again facts which are unappealed from, there is clear actual and potential substantial effect on the environment. As this Court stated, "NEPA does create a discreet (*sic*) procedural obligation on government agencies to give written consideration of environmental issues in connection with certain major federal action and a right of action in an adversely affected party to force that obligation." 45 L.Ed.2d at 215.

The argument with respect to operational conflict, between ILSA and NEPA, becomes even more absurd

after even a brief review of the legislative history of NEPA. After extensive debate about the meaning of NEPA's language in Section 102, "to the fullest extent possible," a statement was issued by the Bill's managers in the House which declared that the Act was to be complied with fully unless existing statutory law expressly prohibited full compliance or made it impossible. 115 Cong. Rec. 39703 (Dec. 17, 1969).

The case of *Calvert Cliffs Coordinating Committee v. A.E.C.* (C.A.D.C., 1971) 449 F.2d 1109 has made clear that Congress intended to excuse an agency from compliance *only* where conflicting authority expressly prohibited compliance with NEPA or made it impossible. 449 F.2d 1115, Note 12.

In the Joint Senate Oversight Hearings the correct interpretation of NEPA emerged, i.e. under NEPA the decision-maker must take a hard look at the environmental consequences of the decision and then decide. This Court said the same thing in the *S.C.R.A.P.* II case. Only where an agency would have to disobey a *specific* statutory command in order to apply NEPA would the latter statute give way. In practically every conceivable set of circumstances, including the one here, such a situation does not occur. *Joint Senate Oversight Hearings,* 92nd Cong. 2nd Session, Ser. No. 92-H-32 (1972) pp. 455-6.

The argument of Petitioner that enforcement of NEPA frustrates the statutory scheme of ILSA completely ignores the obvious legislative intent that Federal agencies *must* reconcile conflicts and fashion compromises. The legislative intent, which has been unanimously accepted by all of the Federal Courts, is not to choose *either* to carry out a development mandate *or* to protect the environment. This instance is merely a lame attempt by HUD to escape the duties of NEPA and its own regulations.

The fallacy of the either/or argument was destroyed with finality in *Calvert Cliffs Coordinating Committee v. A.E.C.*, supra.

A recent lucid example is *N.R.D.C. v. S.E.C.* (D.D.D.C., 1974) 389 F. Supp. 689.

> "Superimposed upon this grant to the SEC of broad rulemaking authority is the Congressional mandate to the federal agencies which is contained in NEPA; that is, NEPA gives specific content to the SEC's authority under the securities laws to require disclosure of information 'in the public interest'. As analyzed in *Calvert Cliffs' Coordinating Comm. v. AEC,* 449 F.2d 1109 [2 ERC 1779] (D.C. Cir. 1971), the procedural requirements of NEPA § 102, 42 U.S.C. § 4332, must be carried out 'to the fullest extent possible'. These procedural requirements are, inter alia: (1) that "policies, regulations, and public laws of the United States shall be interpreted and administered' in accordance with NEPA policies; and (2) that 'all agencies of the Federal Government shall— . . . (F) Make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment.' Thus, Congress has directed the SEC and this Court to interpret the securities laws *to the fullest extent possible* in accordance with the overriding Congressional mandate of NEPA to protect and enhance the Nation's environment. Specifically, *Congress* has determined that the dissemination of information to governmental units, institutions, and interested individuals, can aid the purposes of NEPA." (Emp. added)

Petitioner admits that ILSA is patterned after the Securities and Exchange Act of 1933, 15 U.S.C. § 77a et seq.

Under § 1706(a) of ILSA the Statement of Record becomes effective 30 days after filing but the Secretary is required to give due regard to protection of purchasers *and* the public interest in determining the actual effective date.

Under § 77h of the Securities and Exchange Act, the effective date is 20 days after filing. Notwithstanding the so-called "automatic" effective dates, the Court in *N.R.D.C. v. S.E.C.* (D.C.D.C., 1974) 389 F. Supp 689, stated in effect that the S.E.C. had to comply with NEPA.

That S.E.C. has accepted this ruling is disclosed by the fact that the S.E.C. has failed to appeal therefrom

and is now or has conducted public hearings to bring its procedures into compliance with NEPA.

In spite of HUD's statement that disclosure filings under ILSA are not Federal actions for the purposes of NEPA (see Appendix A) Flint Ridge *admits* that NEPA applies to interstate land sales on p. 17 of its Petition.

HUD's refrain throughout this protracted evasion of its duties under NEPA is that it made no recommendation or report on proposals for legislation, but it does NOT DENY THAT it *took action* (permitting an interstate land sales filing to become effective) and cannot now challenge a finding of fact that this led to a substantial adverse effect on the quality of the human environment. Nor can HUD ignore that Section 102(2)(C) of NEPA includes such action, and in fact HUD admits that its own regulations, 24C.F.R. 1710.105 and 1710.110, require some disclosure of environmental information. The incredible and destructive irony of HUD's attitude is reflected by its letter of March 7, 1974, in which the administrator of the OILSR said:

> "In July, 1973, Secretary Lynn promulgated policy contained in 1390.1, A Handbook of Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality. Disclosure filings required by the Interstate Land Sales Full Disclosure Act are not considered federal actions for purposes of compliance with the National Environmental Policy Act and implementing regulations."

The cold, undisguised truth is that HUD's own handbook gives the lie to its claims. ***HUD has already made a determination that NEPA applies to interstate land sales filings.*** (Handbook 1390.1, 38 FR 19182, July 18, 1973, 39 FR 38922 Nov. 4, 1974).[1]

Further rule making is really not required. HUD has rules and procedures to establish the environmental effects of its decision to declare that Flint Ridge or any other developer has complied with the Interstate Land Sales Act. Petitioner has attacked the decision below on the ground that it converts "any Federal action" into major Federal action. To begin this is similar to a syl-

[1] This Handbook was promulgated in response to NEPA's directive that the Federal Government use all practicable means to implement national environmental policy. One of the main tools for compliance is the EIS. The Handbook sets forth HUD policy and delineates the procedure which all HUD agencies will follow in arriving at the determination as to if and when an EIS is to be prepared. Chapter 2, Part 5(a)(1), of the Handbook lists all HUD activities which are exempt from the requirements of the Handbook. There are three complete exemptions ("an individual action on a one-to-four family dwelling, training grants, individual rehabilitation grants"), and two partial exemptions which concern emergency disaster relief programs. Following the enumerated exemptions is the statement, *"Except for these exemptions, all HUD actions must undergo one or more environmental clearances."* OILSR activities, therefore, would be included in the category which is subject to the HUD procedure of environmental clearance. That procedure consists of a three-tier review of all actions including individual project actions, legislation, regulations, and all policy documents.

logism with one premise missing because the argument fails to take into consideration the *unappealed* from Findings of Fact that there is major federal action AND SUBSTANTIAL EFFECT ON THE QUALITY OF THE HUMAN ENVIRONMENT. See *Aberdeen and Rockfish Railroad Co. v. S.C.R.A.P.,* supra, at 45 L.Ed.2d 215.

Second, Petitioner details a number of statutes involving authority to an agency to control or regulate some form of private activity. These statutory provisions are no different than the control of interstate land sales given to HUD by ILSA. See, for example 15 U.S.C. § 1705 (12), § 1706 (a) (d), § 1707 (a), and 24 C.F.R. 1710.105. In fact, it is even a crime to sell without HUD approval under the Interstate Land Sales Act.

The relevant regulation, 24 C.F.R. 1700.80(a)(b)(c) is set forth in the Appendix D. These statutes and regulations establish beyond challenge that ILSA gives HUD federal control over, direct involvement in, and power to approve action of private parties which can and does adversely affect the environment. The Circuit Court opinion did in fact deal with organic statutes no different from the organic statute involved here.

Even assuming, although we do not agree, that there is a two-test standard under NEPA, no decided case (including *Aberdeen and Rockfish Railroad Co. v. S.C.R.A.P.* at p. 215 of 45 L.Ed.2d) has refused to require an EIS when the effects of the so-called minor activity were significant. See e.g., *Minnesota Public Interest Research Group v. Butz* (C.A. 8, 1974) 498 F.2d 1314 and *National Forest Preservation Group v. Butz* (C.A. 9, 1973) 485 F.2d 408.

3. The Petition for Writ of Certiorari should be denied because the effect on the environment is substantial thereby making the action in this case major federal action.

This Court has instructed us in *Aberdeen and Rockfish Railroad Co. v. S.C.R.A.P.,* supra, that substantial effect upon the environment has a direct relationship to the meaning of the phrase "major federal action." This, of course, is what the lower courts throughout the United States have been saying for some period of time. In *Minnesota Public Research Group v. Butz* (C.A. 8, 1974) 498 F.2d 1314 the court stated that:

> *"To separate the consideration of the magnitude of Federal action from its impact on the environment does little to foster the purposes of the act,* i.e. to 'attain the widest range of beneficial uses of the environment without degradation, risk to health and safety, or other undesirable and unintended consequences.' *By bifurcating the statutory language, it would be possible to speak of a 'minor federal action significantly affecting the quality of the human environment,'* and to hold N.E.P.A. inapplicable to such action. Yet if the action has a significant effect, it is the intent of N.E.P.A. that it should be the

subject of detailed consideration mandated by N.E.P.A.; the activities of Federal agencies cannot be isolated from their impact upon the environment. This approach is more consonant with the purpose of N.E.P.A. as supported in S. Rep. 91-296, supra, and the C.E.Q. Guidelines."

To the same effect see *Wyoming Outdoor Coordinating Council v. Butz* (C.A. 10, 1973) 484 F.2d 1244; *Scientists Institute for Public Information, Inc. v. A.E.C.* (C.A.D.C., 1973) 481 F.2d 1079; *National Forest Preservation Group v. Butz* (C.A. 9, 1973) 485 F.2d 408; *Simmans v. Grant* (S.D. Tex., 1974) 370 F. Supp. 5 and the outright rejection of the argument in *Davis v. Morton* (C.A. 10, 1972) 469 F.2d 593.

4. There are no grounds to grant the petition for Writ of Certiorari.

The Circuit Courts are unanimous. The decision below is in full accord with the pronouncements of this Court. In short, Flint Ridge wholly fails to come within the considerations of Rule 19 of the Rules of the United States Supreme Court.

5. There is no evidence to support any consideration that there will be wide impact from the decision or that the industry involved will be unable, together with HUD, to comply with the National Environmental Policy Act.

The Petitioner, Flint Ridge, on p. 18 makes a significant admission when it states, "Thus, except in the

rare case, where it can be shown that the development will have a significant effect upon the quality of the human environment . . . " This statement alone underscores the need for NEPA compliance.

Notwithstanding the fact that such argument is raised now for the first time before this Court, and further that there is no evidence to support the statement, it is distinctly possible that under the existing HUD guidelines there will, in fact, be no wide impact. To begin, many projects on file with HUD may have been filed prior to the enactment of NEPA or because of their age may be completely developed and sold.

Secondly, other projects may have been abandoned, may be under some form of suspension for economic or other reasons entirely independent of NEPA. In the former instance, it would probably not be necessary to proceed with environmental clearances until such time as it appears that the project will be reinstated. In that latter instance again the agency and the developer is on notice of the existence of the National Environmental Policy Act and could well use the suspension time to bring itself into compliance.

With respect to the remainder of the cases, HUD in its guidelines has a three-tier approach to environmental review. In some instances it may be possible to undertake the environmental review, in good faith, and as a result thereof determine that there would be no significant

effect upon the quality of the human environment. Granted, in some instances it may be necessary to carry the environmental review process to its ultimate conclusion, and that is a full-fledged environmental impact statement. However in those instances where that is necessary, it is in the public interest and in furtherance of the National policy that it be done.[2] Such environmental review would be compatible both with the Interstate Land Sales Act so as to protect purchasers and the public and the National Environmental Policy Act. However, neither Petitioner nor Respondent can advise this Court as to how many projects would require full environmental impact statements.

Petitioner closes with a plea to this Court to reverse the case because of so-called (yet unproven) effects upon the economy. Petitioner apparently feels that the land and our natural resources are not capital and thus free for the taking. Nothing could be further from the truth. Our economy can not risk the burden of failure to com-

[2] Compliance with NEPA invariably results in delay and concomitant cost increases, and Congress has implicitly decided that these costs must be discounted. *Steubing v. Brinegar* (C.A. 2, 1975) 511 F.2d 489 at 497. See also *Greene County Planning Bd. v. FPC*, 455 F.2d 412, 422-23 (2d Cir.), cert. denied, 409 U.S. 849, 93 S.Ct. 56, 34 L.Ed.2d 90 (1972); *Calvert Cliffs' Coordinating Comm. v. AEC*, 146 U.S.App.D.C. 33, 449 F.2d 1109, 1122 (1971). Another direct result of NEPA-caused delays that Congress undoubtedly was aware of, is that the jobs created by a construction project might be interrupted and that the initial employment of some persons might be postponed.

ply with environmental considerations.

VI
CONCLUSION

The traditional reasons for this Court to accept a Petition for Writ of Certiorari do not exist. There is absolutely no Court of Appeals decision in conflict with another Court of Appeals on these issues. All cases are consistent in all respects. Nor are the decisions below in conflict with decisions of this Court.

Respondents have shown that the Petitioner has not properly perfected its appeal in the Circuit Court, that there is no conflict, that NEPA has mandatory requirements superimposed upon the developmental mandates of the agencies and that the Federal action involved herein becomes major if for no other reason than because of the substantial affect on the quality of the human environment.

We, therefore, respectfully pray that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

Andrew T. Dalton Jr.
2536 E. 51st Street
Tulsa, Oklahoma 74105

James N. Khourie
2626 E. 21st Street
Tulsa, Oklahoma 74114

Counsel for Respondents

APPENDIX A

MAR 7 1974

Mrs. Sherrill Nilson
Chairman, Executive Committee
Illinois River Conservation Council
4214 South Whelling Avenue
Tulsa, Oklahoma 74105

Dear Mrs. Nilson:

Thank you for your letter of February 23, 1974, regarding the Interstate Land Sales Full Disclosure Act and provisions of the National Environmental Policy Act.

The Interstate Land Sales Full Disclosure Act is just that, a disclosure act that requires the disclosure of important facts about the land that are of concern to prospective purchasers. It does not give HUD authority to disapprove land developments as such.

In July 1973, Secretary Lynn promulgated policy contained in 1390.1, A Handbook of Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality. Disclosure filings required by the Interstate Land Sales Full Disclosure Act are not considered federal actions for purposes of compliance with the National Environmental Policy Act and implementing regulations.

Sincerely,
George K. Bernstein
George K. Bernstein
Interstate Land Sales Administrator

cc: Bernstein 9230
McDowell 9260
Meeker 7100

Broun/Miller	8204		
Farbstein/ Halpern	10240	Heidermann	9262
		Sullivan	9264
Mitchell/ Elliott	10214	OILSR File	
Curry	10270		
Sauerbrunn	10150		
Race	10150		

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URBAN DEVELOPMENT

APPENDIX B

Department of Housing and Urban Development
Procedures for Protection and Enhancement
of Environmental Quality

Dept. Handbook 1390.1, 38 FR 19182 (July 18, 1973), amend. 39 FR 38922 (Nov. 4, 1974)

On October 20, 1972 (37 FR 22673) the Council on Environmental Quality published HUD Circular 1390.1, "Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality" implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (P.L. 91-190). Although this Circular was issued as a draft on July 16, 1971, it was made effective immediately, pending issuance of final procedures.

The Department consulted with the Council on Environmental Quality on the procedures and considered comments from interested parties, including numerous Federal agencies. Major changes and improvements have been made, and the revised procedures are now being issued in the form of HUD Handbook 1390.1. "Departmental Policies, Responsibilities and Procedures for Protection and Enhancement of Environmental Quality." These new procedures will facilitate and promote the Department's implementation of the National Environmental Policy Act of 1969.

On May 2, 1973 (38 FR 10856) the Council on Environmental Quality published proposed revised guidelines on the preparation of environmental impact statements. These proposed guidelines provide that, after they are made effective, each Federal agency shall revise its procedures to respond to requirements imposed by the revised guidelines.

Since the Department's new procedures will substantially improve implementation of its environmental responsibilities and will soon be further revised to comply with the revised CEQ Guidelines, comment and public procedure would be unnecessary and contrary to the public interest and good cause exists for making HUD Handbook 1390.1 effective upon publication.

Interested parties are invited to submit written comments concerning the revised procedures to the Rules Docket Clerk, Office of the General Counsel, Room 10256, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

(Sec. 7(d), Department of HUD Act; 42 U.S.C. 3535(d); sec. 102(2), National Environmental Policy Act of 1969; 42 U.S.C. 4332(2))

JAMES T. LYNN
Secretary of Housing
and Urban Development.

[1390.1]

DEPARTMENTAL POLICIES, RESPONSIBILITIES AND PROCEDURES FOR PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

HUD STAFF

Approved June 11, 1973.

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DEPARTMENTAL POLICIES, RESPONSIBILITIES AND PROCEDURES FOR PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

CHAPTER I—General Policy and Responsibilities

1 *Purpose and authority.* The National Environment Policy Act of 1969 (P.L. 91-190) establishes new national policy, goals and procedures for protecting and enhancing environmental quality. The act, effective January 1,

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[1] Filed as part of the original document. See 83 Stat. 852, 42 U.S.C. 4321 note.

[2] Filed as part of the original document. See 35 FR 4247, March 7, 1970.

[3] Filed as part of the original document. See 36 FR 7724, April 23, 1971.

[4] Filed as part of the original document. See 37 FR 24146, November 14, 1972.

[5] Filed as part of the original document. See 36 FR 8921, May 15, 1971.

1970, establishes the Council on Environmental Quality to set overall policies to implement the Act.

The National Environmental Policy Act (NEPA) directs the Federal government to use all practicable means, including financial and technical assistance, to implement the national policy. NEPA governs all Federal departments and agencies and requires systematic attention to the environmental consequences of all Federal activities.

The purposes of this Handbook are to set forth departmental environmental policy, to assign responsibilities, and to provide procedural guidance to all headquarters and field offices for environmental clearances under NEPA. The Handbook applies to HUD legislative proposals, policy and guidance documents (including guides, regulations, handbooks, circulars, technical standards, etc.), and individual project approval actions on insurance, loans and grants, subsidies and demonstration projects.

This Handbook is based on authority provided in:

a. The Department of Housing and Urban Development (HUD) Act of 1965 (P.L. 89-174) which provides that the Secretary may make rules and regulations as may be necessary to carry out his functions, powers, and duties, and sets forth, as a matter of national purpose, the sound development of the Nation's communities and metropolitan areas;

b. The National Environmental Policy Act of 1969 (P.L. 91-190) which establishes a comprehensive policy for protection and enhancement of environmental quality by the Federal Government, creates the Council on Environmental Quality (CEQ) in the Executive Office of the President and directs Federal Agencies to carry out the purposes of this Act;

* * *

2. *Terminology*—a. *Environment.* Environment is not defined in NEPA or in the CEQ Guidelines. However, it is clear from section 102 of the Act and elsewhere that the term is meant to be interpreted broadly to include physical, social, cultural, and aesthetic dimensions. Examples of environmental considerations are: air and water quality, erosion control, natural hazards, land use planning, site selection and design, subdivision development, conservation of flora and fauna, urban congestion, overcrowding, displacement and relocation resulting from public or private action or natural disaster, noise pollution, urban blight, code violations and building abandonment, urban sprawl, urban growth policy, preservation of cultural resources, including properties on the National Register of Historic Places, urban design and the quality of the built environment, the impact of the environment on people and their activities.

b. *Major Federal actions significantly affecting the quality of the human environment.* Those actions taken by a Federal agency which require Environmental Impact Statements in accordance with section 102(2)(C) of the National Environmental Policy Act. As HUD processes between 15,000 and 20,000 applications per year at the project level, not including insurance actions on individual houses, the three level environmental clearance process defined in this Handbook shall be used to determine which action is a major Federal action significantly affecting the quality of the human environment.

c. *Significant environmental impact.* For the purposes of this Handbook, the term "significant environmental impact" is used to describe the consequences of an ac-

tion significantly affecting the quality of the human environment. This term is defined to some extent in paragraph 5 of the CEQ Guidelines, but the definition in general is a matter of discretion delegated to agency heads for formulation of guidelines subject to the approval of CEQ.

d. *Environmental impact.* An environmental impact is any alteration of environmental conditions or creation of a new set of environmental conditions, adverse or beneficial, caused or induced by the action or set of actions under consideration. Assessment of the significance of the environmental impact generally involves two major elements: A quantitative measure of magnitude and a qualitative measure of importance. Such a determination is a matter of agency judgment and consensus; at the project level, this judgment shall be governed by HUD environmental policies and standards.

e. *HUD environmental policies and standards:* National, Departmental, and program objectives, policies, standards, and procedures. These include: (1) National environmental goals and policies as expressed in the National Environmental Policy Act, other statutes and Executive Orders listed in paragraph 1 above, and guidelines issued by the Council on Environmental Quality; (2) Department-wide standards and policies such as HUD Circular 1390.2; and (3) environmental considerations contained in program policy and guidance documents, including environment-related project selection criteria, minimum property standards, and environmental elements of program circulars, handbooks and other issuances. Further clarification will be provided with the revision of program policies, procedures, standards and criteria and/or issuance of the consolidated office-wide circulars or handbooks of environmental policies and standards as

provided in paragraph 4.c.(2).

f. *Major amendatory.* For the purposes of this Handbook, a significant change in the nature, magnitude or extent of the action from that which was originally evaluated and which may have a significant affect on the quality of the human environment, such as an environmentally significant change in location or site, area covered, size or design in which case they require environmental clearance. An increase or decrease in cost is considered a major amendatory only when the increase or decrease reflects such an environmentally significant change in the project.

g. *Threshold.* A criterion of size or of environmental impact above which a Special Environmental Clearance is always required. The threshold is designed to screen out the more important HUD actions for special attention. HUD thresholds are set forth in Appendix A-1 of this Handbook.

h. *Decision points.* Those points of Federal commitment in the decision-making process before which prescribed environmental clearances must be completed. HUD decision points are set forth in Appendix A-1 of this Handbook.

i. *Finding of inapplicability (negative statement).* A determination by an authorized HUD official, under the authority of the HUD Guidelines approved by CEQ, which are issued in accordance with the CEQ Guidelines implementing NEPA, that no Environmental Impact Statement is required for the proposed HUD action under consideration. The Finding of Inapplicability for project level actions is a part of the Special Environmental Clearance. The format for the Finding of Inapplicability for policy actions is set forth in Appendix F.

* * *

3. *General policy.* The national goal of "a decent home and a suitable living environment for every American family"—established by the Housing Act of 1949 and subsequently reaffirmed by Congress in 1968—is central to the mission of the Department of Housing and Urban Development (HUD). *The National Environmental Policy Act (NEPA) furthers this goal. While recognizing that adverse environmental impacts are sometimes unavoidable in pursuing other goals, NEPA requires that environmental values be given appropriate consideration in decision-making along with economic and technical factors.* The object is to achieve the optimum balance among competing needs and goals—not to stop the building of cities, but rather to build with foresight so that rational development is achieved with due regard for the capacity of natural and man-made systems and for the quality of life attained within the resulting environment.

In addition to the prevailing national emphasis on anti-pollution and conservation aspects, HUD is also concerned with the environment of urban areas and how it affects the quality of life. Efforts to improve the quality of the environment certainly involve the abatement and prevention of many annoying and threatening nuisances—air pollution, water pollution, land pollution, noise—which impinge on our daily living. But efforts to improve environmental quality also include more positive actions such as provision of open space, the development of aesthetically pleasing urban areas, provision of adequate access to employment and cultural opportunities, reductions in structural deficiencies, maintenance of high quality in new construction, and appropriate planning for the proper juxtaposition of spaces for various human activities.

a. It is the policy of the Department to reject proposals which have unacceptable environmental impacts, based on HUD environmental policies and standards, which cannot be avoided, and to encourage modification of project proposals or plans in order to enhance environmental quality and minimize environmental harm. At each stage of the environmental clearance HUD officials shall work with the applicant to seek means for avoiding adverse environmental impact, maximizing environmental quality, and considering superior alternatives.

b. When environmental clearances reveal conditions or safeguards which should be implemented once a project is approved in order to protect and enhance environmental quality or minimize adverse environmental impacts, such conditions or safeguards shall be set forth as requirements in the contract, grant, or other documents which delineate the obligations of the recipient. The contractor's performance in meeting such conditions shall be monitored and evaluated as part of the normal project monitoring and evaluation.

c. Environmental impact shall be evaluated on as comprehensive a scale as is feasible, with a view to the overall cumulative impact of HUD actions and programs, as well as the project specific impacts of a particular proposal. Environmental factors shall be considered as early as possible in the review and decision-making process.

d. Section 102(2)(A) of the National Environmental Policy Act directs all agencies to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment." When making determinations regarding environmental impacts, HUD officials shall consult HUD professional

personnel, such as urban planners, landscape architects, civil engineers, sanitary engineers, architects, economists, demographers, sociologists, lawyers, and others who are qualified to provide advice on specialized and broad aspects of environmental concerns.

e. HUD officials shall continue to establish and review environmental policies, standards and procedures for administering HUD programs to promote environmental quality. HUD policies and procedures must be consistent with this Handbook.

* * *

CHAPTER 2—Environmental Clearances

5. *Environmental clearance policy on HUD actions.* The purpose of this section is to establish a procedure for determining whether a proposed HUD action is a "major Federal action significantly affecting the quality of the human environment", and whether the proposal should be accepted, rejected, or modified accordingly.

a. *General.* The procedure involves a three level environmental clearance process: Normal Environmental Clearance; Special Environmental Clearance; and Environmental Impact Statement Clearance.

Normal Clearance is essentially a consistency check with HUD environmental policies and standards and a brief evaluation of environmental impact. Special Clearance requires an environmental evaluation of greater detail and depth. Finally, an Environmental Impact Statement is the complete and fully comprehensive environmental evaluation, including formal review by other Federal, State and local agencies, as prescribed by section 102(2)(C) of NEPA.

Many HUD actions will be subject to a Normal Environmental Clearance. On the basis of that clearance, the proposed project shall be accepted, rejected, or modified accordingly. However, if, even after appropriate modification to mitigate environmental impacts, it is determined that there is potential significant environmental impact, Special Clearance procedures shall be initiated. If, after Special Clearance and the implementation of any changes mitigating environmental impacts, such impacts are still significant as a result of the action, an Environmental Impact Statement shall be prepared on the proposed action.

Not all proposed actions will undergo Normal Environmental Clearance. Some, because of their size or for other reasons, shall be processed directly through Special Clearance or Environmental Impact Statement Clearance. Projects which shall go directly through Special Clearance or Environmental Impact Statement Clearance are described in Appendices A and B-1.

All required environmental clearances shall be completed prior to the decision points described in Appendix A. The environmental clearance process is discussed further in Appendix B.

(1) *Exemptions.* Although HUD's general policy on environmental considerations applies to all HUD actions, the procedural requirements for environmental clearances set forth in this paragraph shall not apply to those HUD actions which have been determined not be "major Federal actions significantly affecting the quality of the human environment". These shall include an individual action on a one-to-four family dwelling, training grants, or rehabilitation and modernization projects which do not extend the life of a structure twenty (20) years or more. Exemptions from environmental clearances do not exempt these activities from the requirements of Section 106 of the National Historic Preservation Act of 1966 when a property is listed on, or nominated to, the Na-

tional Register of Historic Places. (See Appendix L for Advisory Council on Historic Preservation procedures.)

Planning assistance projects (701 Comprehensive Planning Assistance grants and other planning loans and grants) are exempted from the procedural requirements, but in lieu thereof an environmental assessment of the final planning product shall be required as part of the proposed planning program.

With respect to disaster relief and emergency activities of the Department, procedures for environmental clearance shall not apply to actions designed to meet the temporary housing needs of the affected population. Disaster activities which provide permanent housing and other recovery efforts will follow the environmental clearance procedures. However, where required by the serious nature of the situation and upon the approval of the Assistant Secretary for CPD, activities such as disaster related early land acquisition, clearance of damaged structures and relocation efforts may take place prior to the completion of the environmental review.

Except for these exemptions, all HUD actions must undergo one or more environmental clearances. (Emp. added)

(2) *Additional requirements.* The responsibilities and clearance requirements set forth in this paragraph represent minimum Departmental requirements. Regional Administrators and Area and Insuring Office Directors with the concurrence of the Regional Administrator have discretion to require such additional clearances and responsibilities as are deemed necessary for the effective implementation of this Handbook.

(3) *Controversy.* Decisions resulting from Normal or Special clearance shall give adequate consideration to existing or potential environmental controversy. Issues raised by opponents and supporters of the HUD actions

shall be carefully examined to determine whether the project involves significant environmental impacts. Major controversy which appears to raise substantive environmental issues is a factor which should contribute to a decision to undertake a more comprehensive environmental clearance procedure than would otherwise be initiated. For example, in the case of projects which would ordinarily require only Normal Clearance, major environmental controversy should weigh heavily in the decision to undertake a Special Clearance. Likewise for projects which normally require only Special Clearance, major controversy on environmental issues should weigh heavily in the decision to undertake Environmental Impact Statement Clearance.

(4) *Retroactivity.* To the maximum extent practicable, environmental clearance shall be required for uncompleted projects which have never gone through an environmental clearance under NEPA, at such time as a subsequent significant HUD action, such as the next stage of program approval or approval of a major amendatory, is proposed. Where it is not practicable to reassess the basic course of action, major attention should be given to measures, which, given the stage of project completion, may reduce adverse environmental impact. It is also important in taking further action that account be taken of environmental consequences not fully evaluated at the outset of the project.

(5) *Evaluation of comprehensive activities.* Individual actions that are related either geographically or as logical parts in a composite of contemplated actions may be more appropriately evaluated in a single environmental clearance. For example, several subdivisions may form a large new development. Likewise, a comprehensive project may be composed of, or include, several interrelated

activities, e.g., development of a new community or redevelopment of a center city area. In these cases, and where feasible, HUD offices should aggregate individual activities into a larger package and environmental evaluation shall concentrate on the broad and cumulative impacts of the larger activity, as well as the project specific impact of component activities to the extent known.

The comprehensive environmental evaluation will not satisfy the requirements of this Handbook, howeveer, if it is superficial or limited to generalities. When all significant issues cannot be anticipated or adequately treated in connection with the comprehensive assessment as a whole, environmental clearances of more limited scope will be necessary on subsequent, individual actions in order to fulfill the requirements of this Handbook.

Impacts of individual activities may be singularly limited but cumulatively considerable. One purpose of this provision, therefore, is to stimulate a more comprehensive environmental evaluation. In addition, there may be environmental impacts which are common to all or most components of the larger activity. A secondary purpose, therefore, is to eliminate duplicative evaluative efforts where possible. In no case shall this provision be interpreted to avoid a detailed examination of environmental impacts.

* * *

APPENDIX C

HUD Proposed Rules, 24 C.F.R. Part 50

Subpart B—Environmental Clearances on HUD Actions

§ 50.10 Purpose.

The purpose of this subpart is to establish a procedure for determining whether a proposed HUD action is a "major Federal action significantly affecting the quality of the human environment", and whether the proposal should be accepted, rejected, or modified accordingly.

§ 50.11 Environmental clearance process.

The procedure involves a three level environmental clearance process: Normal Environmental Clearance; Special Environmental Clearance; and Environmental Impact Statement Clearance. Normal Clearance is essentially a consistency check with HUD environmental policies and standards and a brief evaluation of environmental impact. Special Clearance requires an environmental evaluation of greater detail and depth. Finally, an Environmental Impact Statement is the complete and fully comprehensive environmental evaluation, including formal review by other Federal, State and local agencies, as prescribed by section 102(2)(C) of NEPA. Many HUD actions will be subject to a Normal Environmental Clearance. On the basis of that clearance, the proposed project shall be accepted, rejected, or modified accordingly. However, if, even after appropriate modification to mitigate environmental impacts, it is determined that there is potential significant environmental impact, Special Clearance procedures shall be initiated. If, after Special Clearance and the implementation of any changes mitigating environmental impacts, such impacts are still significant as a result of the action, an Environmental Impact Statement shall be prepared on the proposed action. The mere

mitigation of adverse effects does not indicate that a project has no significant impact; an Environmental Impact Statement may be required even though adverse effects have been mitigated. All required environmental clearances shall be completed prior to the decision points described in Appendix A.

(a) *Exemptions.* Although HUD's general policy on environmental considerations applies to all HUD actions, the procedural requirements for environmental clearances set forth in this subpart shall not apply to those HUD actions which have been determined not to be "major Federal actions significantly affecting the quality of the human environment". These shall include an individual action on a one-to-four family dwelling, training grants, or rehabilitation and modernization projects which do not extend the life of a structure twenty (20) years or more. Exemptions from environmental clearances do not exempt these activities from the requirements of section 106 of the National Historic Preservation Act of 1966 when a property is listed on, or nominated to the National Register of Historic Places.

(1) Planning assistance projects (701 Comprehensive Planning Assistance grants and other planning loans and grants) are exempted from the procedural requirements, but in lieu thereof an environmental assessment of the Final planning product shall be required as part of the proposed planning program.

(2) With respect to disaster relief and emergency activities of the Department, procedures for environmental clearance shall not apply to actions designed to meet the temporary housing needs of the affected population. Disaster activities which provide permanent housing and other recovery efforts will follow the environmental clearance procedures. However, where required by the serious nature of the situation and upon the approval of the

Assistant Secretary for CPD, activities such as disaster related early land acquisition, clearance of damaged structures, and relocation efforts may take place prior to the completion of the environmental review.

(3) *Except for these exemptions, all HUD actions must undergo one or more environmental clearances prior to the decision-points listed in Appendix A-1 to this part.* (Emp. added)

(b) *Limitation on actions pending clearance.* Pending preparation and completion of any environmental clearance, the appropriate HUD official may, after consultation with the Assistant Secretary for CPD or his designee, direct an applicant to refrain from taking any action with respect to a project which such official determines might have an adverse environmental effect or might so alter the environmental premises on which the clearance is based as to affect the validity of the conclusions reached. Such official may also direct the applicant to take such additional actions as he determines are necessary to preserve the status quo. The applicant shall promptly comply with all directions issued in accordance with this subsection.

(c) *Additional requirements.* The responsibilities and clearance requirements set forth in this subpart represent minimum Departmental requirements. Regional Administrators and Area and Insuring Office Directors with the concurrence of the Regional Administrator have discretion to require such additional clearances and responsibilities as are deemed necessary for the effective implementation of this part.

(d) *Controversy.* Decisions resulting from Normal or Special Clearance shall give adequate consideration to existing or potential environmental controversy. Issues raised by opponents and supporters of the HUD actions shall be carefully examined to determine whether the project involves significant environmental impacts. Major

controversy which appears to raise substantive environmental issues is a factor which should contribute to a decision to undertake a more comprehensive environmental clearance procedure than would otherwise be initiated. For example, in the case of projects which would ordinarily require only Normal Clearance, major environmental controversy should weigh heavily in the decision to undertake a Special Clearance. Likewise for projects which normally require only Special Clearance, major controversy on environmental issues should weigh heavily in the decision to undertake Environmental Impact Statement Clearance.

(e) *Retroactivity.* To the maximum extent practicable, environmental clearance shall be required for uncompleted projects which have never gone through an environmental clearance under NEPA, at such time as a subsequent significant HUD action, such as the next stage of program approval or approval of a major amendatory, is proposed. Where it is not practicable to reassess the basic course of action, major attention should be given to measures which, given the stage of project completion, may reduce adverse environmental impact. It is also important in taking further action that account be taken of environmental consequences not fully evaluated at the outset of the project.

(f) *Evaluation of comprehensive activities.* Individual actions that are related either geographically or as logical parts in a composite of contemplated actions may be more appropriately evaluated in a single environmental clearance. The comprehensive environmental evaluation will not satisfy the requirements of this part, however, if it is superficial or limited to generalities. When all significant issues cannot be anticipated or adequately treated in connection with the comprehensive assessment as a whole, environmental clearances of more limited

scope will be necessary on subsequent individual actions in order to fulfill the requirements of this part.

* * *

(h) *Environmental clearance forms.* Environmental clearance forms shall be used in conducting the required environmental clearance(s) for project level actions as directed in this part. Form ECO-1, completed by the applicant, shall be used by HUD principally as a source of factual information. An independent environmental assessment and evaluation shall be conducted by HUD on Form ECO-2 or Form ECO-3, or an Environmental Impact Statement shall be prepared. The completed clearances shall become part of the application file and shall accompany the proposal through the review and decision-making process.

(1) The Applicant's Environmental Information, Form ECO-1, shall be required of applicants for all project proposals except those exempted in § 50.11(a)(1). The applicant shall be provided with Form ECO-1 along with the required program application forms, and the environmental clearance requirements shall be explained in the earliest stages of contact and application preparation. The appropriate HUD official shall indicate to the applicant the initial level of environmental clearance required for the proposed project. The completed Form ECO-1 shall accompany A-95 notification where required. It shall be submitted to HUD with the completed application.

(2) After obtaining information from other sources, HUD shall evaluate and verify the information provided by the applicant on Form ECO-1. HUD may begin preparing the appropriate clearance worksheet at this time or may await the resolution of problems. The applicant shall be asked to modify or supplement Form ECO-1 as appropriate: If there is inadequate information,

the applicant shall be asked to supplement Form ECO-1 with documentation as necessary; if there are environmental problems, the applicant shall be asked to present solutions, modify the project, include measures to enhance environmental quality or reduce adverse environmental impacts, provide assurances and documentation as necessary, and amend or revise Form ECO-1 accordingly. HUD shall then complete the appropriate environmental clearance worksheet, or shall prepare the Draft Environmental Impact Statement.

(i) *Relationship Between A-95 procedures and environmental clearance procedures.* OMB Circular A-95 provides a mechanism for securing comments and views of State and local agencies regarding the impact, including environmental impact, of Federal and Federally-assisted projects. The A-95 requirements are coordinated, but not synonymous, with the requirements set forth in this part. Those programs or projects which are not subject to A-95 requirements are nevertheless subject to environmental clearance requirements unless specifically exempted in § 50.11(a)(1). The requirements of this part and OMB Circular A-95 shall be coordinated in the following manner:

(1) *Project Notification and Review System (PNRS).* The A-95 Project Notification and Review System requires that, for non-housing programs covered by Attachment D of the A-95 Circular, the applicant submit to the appropriate clearinghouses a notice of intent to file an application for Federal assistance. For housing projects exceeding A-95 thresholds listed in paragraph 7c of Attachment A and under programs listed Attachment D, HUD is required to send the application submitted by the applicant to the appropriate clearinghouses. Housing projects under A-95 thresholds are not subject to the A-95 requirements. Environmental clearances procedures

set forth in this part require that the applicant prepare Form ECO-1. For programs also covered by the A-95 Circular, such form shall accompany the A-95 submission.

(2) *Inclusion of A-95 Comments in Draft EIS.* A-95 review of a proposed project generally takes place prior to the preparation of an impact statement. Therefore, comments on the proposed project that are secured during this stage of the A-95 process must be included in the Draft EIS. The comments received from clearinghouses, or by State and local environmental agencies through clearinghouses, in the A-95 review shall be attached to the draft impact statement when it is circulated for review.

(3) *Review of environmental impact statement.* If an Environmental Impact Statement is required, HUD shall notify the appropriate A-95 clearinghouses of HUD's intent to prepare and file the Draft Statement. When the Draft Statement is distributed, HUD shall send copies of the Statement to the appropriate clearinghouses for review and comment, regardless of whether or not the subject proposal is covered by OMB Circular A-95. The clearinghouses shall also receive copies of the Final Statement for their information.

(j) *Updating environmental clearances.* Environmental clearances shall be updated by revision, amendment or addendum to the original clearance, if:

(1) Additional information with significant implications for environmental impact or additional environmental impacts not previously considered is discovered during the review process. Actions which went through Normal or Special Environmental Clearance shall be updated by revision, amendment or addendum to the original environmental clearance worksheet. A new finding shall then be made on the basis of all information,

and action taken accordingly. For actions for which a Draft and Final Environmental Impact Statement was prepared and distributed, the Final Statement shall be revised and reissued, or an addendum to the Statement shall be prepared and distributed. Such revision or addendum shall be subject to the same review and comment procedures as was the original Final Statement.

(2) Major amendatories are proposed. For major amendatories, the type and extent of environmental clearance required shall depend on the type, size and scale of the proposed action as amended. If an EIS is prepared for the amendatory, it shall be prepared and processed pursuant to § 50.14.

(3) HUD approval action is required for component activities whose environmental impacts were not addressed in sufficient detail in original environmental clearance for the larger action. Such clearance shall focus on the environmental impact of the specific project and site and need not treat the environmental impact on the more comprehensive level addressed in the original Environmental Impact Statement. A finding shall then be made as to the significance of the environmental impact of the specific project activity, and action taken accordingly. If an Environmental Impact Statement is prepared for the component activity, it shall be prepared and processed pursuant to § 50.14.

§ 50.12 Normal environmental clearance.

Normal Environmental Clearance shall be required for HUD actions for which it is not immediately evident that Special Environmental Clearance or Environmental Impact Statement Clearance is required. Normal Environmental Clearance is a consistency check with HUD environmental policies and standards and a brief evaluation of environmental impact. Information shall be requested

from the applicant on Form ECO-1 and gathered from other sources as appropriate. After modifications to the proposal to mitigate environmental impacts as necessary, HUD shall conduct an independent assessment and evaluation on Form ECO-2.

(a) *Responsibility for clearance.* Responsibility for Normal Environmental Clearance shall rest with the Area/Insuring Office program staff. An information copy shall be sent to the ECO.

(b) *Action resulting from clearance.*

(1) If after appropriate modifications to the proposal there exist environmental impacts which are unavoidable, and, based on HUD environmental policies and standards, such impacts are also considered unacceptable, then the proposal shall be rejected.

(2) If there is no significant environmental impact, processing of the proposal may proceed. Conditions or safeguards found to be necessary in order to protect and enhance environmental quality or minimize adverse environmental impacts shall be set forth in the contract, grant, or comparable document.

(3) If after appropriate modifications to the proposal to mitigate environmental impacts, there remains significant or potentially significant environmental impact, Special Environmental Clearance or EIS, as appropriate, is required. The mere mitigation of adverse effects does not indicate that a project has no significant impact; an EIS may be required even though adverse effects have been mitigated.

§ 50.13 Special environmental clearance.

Project level actions found to require Special Environmental Clearance by virtue of their size or scale (in relation to the thresholds in Appendix A-1 to this part) or other characteristics indicating significant en-

vironmental impact, or as a result of Normal Environmental Clearance, shall be subject to the requirements in paragraph (a) of this section. Proposed legislation, regulations, policy issuances, guidance documents, and revisions to such regulations and documents, which may have significant environmental impact, shall be required to undergo the Special Environmental Clearance for policy actions as set forth in paragraph (b) of this section.

(a) Project level actions. Special Environmental Clearance for project level actions is a preliminary version of the analysis required in the Environmental Impact Statement. It provides the HUD official with a factual basis for determining whether the proposed action has a significant environmental impact and hence, whether it should be approved, rejected, or modified, or whether an Environmental Impact Statement is required. Information required shall be requested from the applicant on Form ECO-1 and gathered from other sources as appropriate. After modifications to the proposal to mitigate environmental impacts as necessary, HUD shall conduct an independent assessment and evaluation. On the basis of this assessment an environmental finding shall be made and accompany the application through the review process.

* * *

(2) *Action resulting from clearance.*

(i) If after appropriate modifications to the proposal, there exist environmental impacts which are unavoidable, and, based on HUD environmental policies and standards, such impacts are also considered unacceptable, then the proposal shall be rejected.

* * *

(iii) If after appropriate modifications to the proposal to mitigate environmental impacts, there remains

significant or potentially significant environmental impact, an Environmental Impact Statement shall be prepared. The mere mitigation of adverse effects does not indicate that a project has no significant impact; an EIS may be required even though adverse effects have been mitigated.

* * *

§ 50.14 Environmental impact statement clearance.

Environmental Impact Statement Clearance shall be required for all major HUD actions significantly affecting the quality of the human environment.

(a) *Environmental impact statement.* The Environmental Impact Statement is comprised of two stages, Draft and Final.

(1) *Notice of intent to file an environmental impact statement.* As soon as practicable after a determination is made that a HUD action will require the preparation and circulation of an environmental impact statement, a Notice of Intent to File shall be prepared to inform the public and to solicit comments that may be helpful in preparing the statement. Copies of this notice shall be sent to local newspapers, groups known to be interested in the agency's activities, the chief executive of the general unit of local government, local and State agencies, A-95 clearinghouses, the Assistant Secretary for CPD, the RO and CO-ECOs, and the RO Public Information Officer. When the appropriate HUD official determines that an environmental impact statement is not necessary, a Notice of Intent Not To File an EIS shall be prepared to inform the public under the following circumstances:

(i) HUD has previously announced the action would be the subject of an environmental impact statement; or

(ii) HUD has made a Finding of Inapplicability in response to a request from CEQ for the preparation and

circulation of an EIS.

The notice shall include a statement of the reasons for this decision. This determination and the reasons for the decision shall be prepared and disseminated in the same manner as a Notice of Intent to File an EIS.

* * *

(d) *Action resulting from clearance.* Based on the Environmental Impact Statement clearance, including comments and suggestions by other agencies and interested parties, HUD shall attempt to mitigate adverse environmental impacts to the extent practicable. If there remain adverse environmental impacts which are unavoidable, and based on HUD environmental policies and standards, such impacts are also considered unacceptable, the proposal shall be rejected. Otherwise, unavoidable adverse environmental impacts shall be weighed against benefits to be obtained from approval of the proposal. Where environmental costs which would be incurred outweigh such benefits, the proposal shall be rejected. Where benefits of the proposal outweigh environmental costs, processing may proceed; conditions or safeguards found to be necessary in order to protect and enhance environmental quality or minimize adverse environmental impacts shall be set forth in the contract, grant, or comparable document.

APPENDIX D

Title 24—Housing and Urban Development

Subpart B—Delegations of Basic Authority and Functions

§ 1700.80 Director of the Examination Division, Office of Interstate Land Sales Registration, and Deputy.

To the position of Director of the Examination Division, Office of Interstate Land Sales Registration, and under his supervision to the position of Deputy Director there are delegated and assigned the following authorities and responsibilities.

(a) To receive and examine all statements of record and property reports filed under the provisions of the Interstate Land Sales Full Disclosure Act and all amendments and corrections to such statements.

(b) To determine the adequacy of disclosure of statements of record and property reports and amendments thereto and to effect corrections, additions, and deletions in such statements and reports deemed necessary to achieve the purposes of the Interstate Land Sales Full Disclosure Act.

(c) To find effective or to recommend to the Administrator that he declare not effective statements of record filed under the Interstate Land Sales Full Disclosure Act and to prepare and present evidence in connection with hearings and other administrative proceedings relative to statements of record declared not effective.

* * *

§ 1710.45 Suspensions.

(a) *Suspension notice—prior to effective date.*—(1) A suspension notice with respect to a Statement of Record or an amendment may be issued to a developer by the

Secretary within 30 days after the date of filing if prior to its effective date, the Secretary has reasonable grounds to believe that a Statement of Record is on its face incomplete or inaccurate in any material respect; or prior to its effective date, the Secretary has reasonable grounds to believe that an amendment is on its face incomplete or inaccurate in any material respect.

(2) Suspension notices issued pursuant to this subsection shall suspend the effective date of the statement or the amendment until 30 days, or such earlier date as the Secretary may determine, after the developer files such additional information as the Secretary shall require

(3) A developer, upon receipt of a suspension notice may request a hearing within 15 days of receipt of such notice. Such hearing shall be held within 20 days of receipt of such request by the Secretary.

(4) Suspension notices issued pursuant to this section shall continue in effect until all deficiencies cited in the notice are corrected.

(b) *Suspension orders—subsequent to effective date.*—(1) A notice of proceedings to suspend an effective Statement of Record may be issued to a developer if the Secretary has reasonable grounds to believe that an effective Statement of Record includes an untrue statement of a material fact, or omits a material fact required by the Act or the rules and regulations, or omits a material fact which is necessary to make the statements therein not misleading. The Secretary may, after notice, and after opportunity for a hearing requested within 15 days of receipt of such notice, issue an order suspending the Statement of Record. In the event that a suspension order is issued, such order shall remain in effect until the developer has amended the Statement of Record or otherwise complied with the requirements of the order.

When the developer has complied with the requirements of the order, the Secretary shall so declare and thereupon the suspension order shall cease to be effective.

(2) If the Secretary undertakes an examination of a developer or his records to determine whether a suspension order should be issued, and the developer fails to cooperate with the Secretary or obstructs, or refuses to permit the Secretary to make such examination, the Secretary may issue an order suspending the Statement of Record. Such order shall remain in effect until the developer has complied with the requirements of the order. When the developer has complied with the requirements of the order, the Secretary shall so declare and thereupon the suspension order shall cease to be effective.

(3) Upon receipt of an amendment to an effective Statement of Record, the Secretary may issue an order suspending the Statement of Record until the amendment becomes effective if he has reasonable grounds to believe that such action is necessary or appropriate in the public interest or for the protection of purchasers.

(4) Suspension orders issued pursuant to this subsection shall operate to suspend the Statement of Record as of the date the order is either served on the developer or his registered agent or is delivered by certified or registered mail . . .

* * *

As to the "not misleading" requirement, see Instruction A(2) of the Instructions for Completion of the Statement of Record, 24 C.F.R. Sec. 1710.105, which requires that

> "in addition to the information expressly required to be stated in the statement of record, there shall be added such further material information, documentation and certification, *if any, as may be neces-*

sary in the public interest and for the protection of purchasers or necessary in order to make the statements in the light of the circumstances under which they are made, not misleading.

APPENDIX E

5th Annual Report of C.E.Q. (pp. 21-26, 489-90)

* * *

Leisure Homes and Recreational Development

As incomes and leisure time have increased over recent years, there has been a growing demand for recreational facilities in rural areas. Out of this demand have come the phenomena of leisure home and recreational lot developments—high density developments in rural settings. These phenomena create the same types of costs as the forms of urbanization described above. With recreational developments, in fact, the long-term costs of development to both property owners and the public may be greater than in most urban areas, and there may be more urgent need for effective controls.

Leisure home developments, of course, are not a new phenomenon. The Florida east coast, Cape Cod, Estes Park, and Lake Tahoe have been the sites of second home construction for many decades. Originally, these homes were owned almost exclusively by wealthier Americans, and houses were often expensive and built on large sites.

The more recent boom in second homes and recreational lots has involved a far broader stratum of society. Increased affluence has given more Americans the opportunity and desire to obtain such properties for themselves. This, combined with a widespread belief in the profitability of investment in land and reinforced by favorable income tax laws, has provided the ingredients for the recreational land and leisure home boom. The lots are smaller, the houses are more spare than traditional summer homes, and demand is many times greater than it was even a few years ago. Today approximately

3.4 million American families own second homes. Including owners of recreational lots, a total of 5 to 7 million American families are estimated to own recreational properties of some kind.

Table 4 presents a number of characteristics of households owning leisure homes. It shows clearly that these homes are no longer the province of the very wealthy. They are owned by families somewhat wealthier and somewhat older than the average but still comprising essentially a cross section of society. (Corresponding information about owners of recreational lots is not available, although there is evidence that they tend to be less affluent.)

The material on leisure homes and other recreational properties was obtained from a study on leisure homes undertaken by the American Society of Planning Officials for the Council on Environmental Quality in association *with the Department of Housing and Urban Development* and the Appalachian Regional Commission. The study indicates the importance of distinguishing between two separate aspects of the phenomenon: (1) the purchase of recreational lots, which are usually part of large subdivisions of plotted land where few of the lots may ever be developed; and (2) the ownership of leisure homes, which may be built by the owner in a subdivision or on a separate site, or built in large numbers by a developer.

Récreation lot sales often result from mail solicitation or telephone calls, and many buyers sign sales contracts without ever seeing the land. The Interstate Land Sales Act requires most lot sales in interstate commerce to be registered with the Office of Interstate Land Sales at the Department of Housing and Urban Development. Table 5, showing the regional breakdown of projects so registered, and Table 6, showing leisure homes by region,

Table 4

Selected Characteristics of U.S. Leisure Home Owners and Total U.S. Population

Characteristic	Percent of all households	Percent of leisure home owners	Leisure home owners as a percent of total households
Annual family income			
Less than $5,000	29.4	18.8	2.9
$5,000 to $9,999	30.9	24.5	3.6
$10,000 to $14,999	22.6	23.7	4.7
$15,000 to $24,999	13.2	20.9	7.2
$25,000 or more	3.9	12.1	14.1
Value of primary home			
Less than $15,000	41.3	31.3	3.4
$15,000 to $19,999	20.2	17.8	4.0
$20,000 to $24,999	14.7	13.5	4.1
$25,000 to $34,999	14.1	18.1	5.8
$35,000 to $49,999	6.5	10.7	7.4
$50,000 or more	3.2	8.6	12.2
Tenure of primary home			
Owned	59.3	73.1	5.6
Rented	35.4	22.7	2.9
Co-op or condominium	0.5	1.1	11.0
Other	4.8	3.1	2.9
Primary residence			
Inside SMSAs	69.1	68.0	4.4
Central city	34.1	31.0	4.1
Urban balance	24.7	26.2	4.8
Remainder	10.4	10.8	4.7
Outside SMSAs	30.9	32.0	4.7
Urban	75.1	75.2	4.5
Rural	24.9	24.8	4.5
Rural-nonfarm	20.0	20.3	4.6
Rural-farm	4.9	4.5	4.1
Places 10,000 to 50,000	20.4	21.9	4.8
Age of head of household			
Less than 25 years	7.1	4.0	2.5
25 to 34 years	21.0	10.0	2.1
35 to 44 years	21.2	18.5	3.9
45 to 54 years	20.1	25.9	5.8
55 to 64 years	17.5	22.7	5.9
65 years or older	13.1	18.9	6.5
Family size			
1 person	17.6	13.3	3.4
2 persons	29.6	35.0	5.3
3 persons	17.2	18.1	4.7
4 or 5 persons	25.2	24.8	4.4
6 or more persons	10.4	8.8	3.8

Source: Richard L. Ragatz Associates, *Recreational Properties: An Analysis of the Markets for Privately Owned Recreational Lots and Leisure Homes* (Springfield, Va.: National Technical Information Service, 1974).

Table 5

Recreational Properties Registered with the Office of Interstate Land Sales

	Acres in projects		Lots in projects	
	Total	Per 100 acres of region's area	Total	Per 100 families in region
United States	**7,146,229**	**0.5**	**3,375,821**	**5.3**
Northeast	**231,555**	**0.2**	**133,671**	**0.9**
New England	77,251	0.2	36,766	1.0
Middle Atlantic	154,304	0.2	96,905	0.8
North Central	**279,214**	**0.1**	**224,886**	**1.3**
East North Central	168,634	0.1	132,389	1.1
West North Central	110,580	0.04	92,497	1.8
South	**3,370,140**	**1.0**	**2,037,908**	**10.6**
South Atlantic	2,243,119	1.4	1,113,146	11.8
East South Central	127,291	0.1	123,022	3.2
West South Central	999,730	0.4	801,740	13.5
West	**3,265,320**	**0.8**	**979,356**	**8.8**
Mountain	2,489,408	0.9	750,270	29.8
Pacific	775,912	0.6	229,086	2.6

Source: Richard L. Ragatz Associates, *supra* Table 4, pp. 84, 87, 500.

Table 6

U.S. Leisure Homes by Region, 1970

Region	Total housing units	Leisure homes[1]	Percent of all housing units in region	Percent of all leisure homes in United States
United States	**68,418,094**	**2,143,434**	**3.1**	**100.0**
Northeast	**16,641,954**	**556,790**	**3.4**	**26.0**
New England	4,031,531	221,806	5.5	10.4
Middle Atlantic	12,610,423	334,984	2.7	15.6
North Central	**19,018,773**	**667,148**	**3.5**	**31.1**
East North Central	13,323,755	421,225	3.2	19.7
West North Central	5,695,018	245,923	4.3	11.5
South	**20,730,508**	**631,242**	**3.0**	**29.5**
South Atlantic	9,970,059	287,374	2.9	13.4
East South Central	4,184,006	127,039	3.0	5.9
West South Central	6,576,443	216,829	3.3	10.1
West	**12,026,859**	**288,254**	**2.4**	**13.5**
Mountain	2,762,783	115,901	4.2	5.4
Pacific	9,264,076	172,353	1.9	8.0

[1] "Leisure Homes" are enumerated by combining the Bureau of the Census categories "Rural Seasonal Vacant" and "Other Rural Vacant." This combination basically includes housing units which are intended for occupancy during only certain seasons of the year.

Source: Richard L. Ragatz Associates, *supra* Table 4, p. 91.

indicate a heavy concentration of lots in the South and in the West. Six states—Florida, Texas, California, New Mexico, Arizona, and Colorado—contain over 80 percent of the acreage in registered recreational lot sales projects.

These figures demonstrate that recreational land and leisure home developments have become very important in the United States. With them have come a host of problems. Some problems are consumer-related, such as fraudulent advertising and high pressure sales tactics used to take advantage of naive buyers. Attempts are being made to curb these unethical practices through implementation of the Interstate Land Sales Act at the Federal level and through similar laws in some states.

Other problems arise because such development brings what amounts to instant urbanization to rural communities—communities where local governments have little experience with the impacts of large-scale development and few land use controls or regulatory bodies to deal with them.

Many leisure homes are being built in subdivisions that differ little in appearance from typical middle income suburban developments. Yet they are often built to much lower standards. If the home remains a summer weekend retreat, this may not create serious problems. But experience shows that seasonal homes are often converted into year-round homes and leisure home developments into permanent communities. This process may take a few years or decades, depending on the proximity of the homes to urban employment areas. In the mountains of northern Virginia, some homes in recreational subdivisions are being occupied as first homes from the time they are built, with their occupants commuting two hours or more to jobs on the fringes of Washington and Baltimore. School buses can be seen serving these developments

soon after the first houses go up. In short, the leisure home subdivision of today is likely to become the permanent settlement or suburb of tomorrow and should be viewed as an early form of urbanization.

This being true, it is necessary for a community to consider very carefully what development standards are appropriate for these subdivisions, particularly in communities with little growth experience, where officials are not equipped to cope with rapid growth and change. Many rural communities initially welcome second home developments in the expectation that they will provide property tax revenue and income for the local economy. They usually do, but they also create costs. Local governments often end up bearing the cost of increased demands the developments place on such public services as fire and police protection, road maintenance, water supply, solid waste disposal, and sewers. As long as recreational subdivisions remain seasonally occupied, these costs are likely to be lower than the property tax revenues generated by the development. However, as soon as residences become permanent, costs to the host communities will rise rapidly as schools, medical facilities, and other public services are required.

The eventual public costs will be particularly high if the development was originally built to low standards. Septic fields may have to be replaced by a sewer system; poorly constructed roads may have to be rebuilt. Replacing such facilities is very expensive, often more expensive than building adequate facilities at the time of the initial development.

Now only will the costs of low quality development be higher to the government, but they will also be higher to the homeowners. Inadequate insulation, poor drainage, and insufficient heating capacity may be small

problems during summer weekends, but they become major concerns at other times of the year.

The developments may also create serious environmental problems, although many of these can be avoided by careful design and review. Inadequate septic systems can pollute streams or aquifers and thus cause public health problems. Serious erosion can clog streams with silt. Demand for water can overtax local supplies. These environmental problems can cause particular difficulty because the most desirable sites for recreational developments are often in fragile environments unsuitable for housing development, such as steep mountain slopes, coastal dunes, or marshes.

In addition to such environmental problems, the developments also present potential conflicts with public recreational goals. The crowding of seasonal homes along the coast or around the shore of a lake often denies access to those resources for public recreation. And developing land adjacent to national parks and forests guarantees the owners that they will always have ready access to natural areas, but it prohibits the later expansion of public land holdings for the benefit of the general public.

Many of these problems are very similar to those faced in urban areas. The CEQ's study of second homes, mentioned above, will attempt to help rural communities in dealing with proposed developments. One specific product of the study is an impact evaluation handbook for local officials to use in assessing the costs and benefits of proposed recreation developments.

* * *

Leisure Homes Study

The Council, in association with the Department of Housing and Urban Development and the Appalachian

Regional Commission has sponsored an 18-month study of leisure home and similar recreational land projects. The study was conducted by the American Society for Planning Officials with the Conservation Foundation, the Urban Land Institute, and Professor Richard Ragatz of the University of Oregon as subcontractors. Some of the results of this study are discussed in Chapter 1 of this Annual Report.

The first part of the study involved an extensive analysis of the market for recreational properties. Using several new sources of data, this analysis summarizes what is known about the number and location of lots developed, homes built, projects started, facilities provided, and about the developers and owners of these properties. This analysis also includes regional projections of recreational developments.

The second part of the study involves an analysis of the economic environmental, social, and political impacts of leisure homes and certain other types of recreational developments on the localities and regions in which they occur. This analysis is based on an extensive review of previous research on leisure home development as well as a number of case studies undertaken by the research team. As mentioned in Chapter 1, the study concludes that leisure homes are over time converted into permanent residences and therefore should be viewed as a special form of early urbanization which generates the same types of economic, environmental, and social impacts as other residential developments. Further, leisure home developments may create more serious environmental problems than most residential developments because they often take place where there are few effective land use controls and are often built to lower standards and in less suitable environments—for example, on

mountainsides or in wetlands—than normal surburban subdivisions.

In terms of their economic impact on the local government, the study finds that as long as they are used only for recreational purposes, leisure homes usually generate tax revenues in excess of the costs of the public services required. However, as the developments become converted to permanent homes, these costs may exceed the tax payments, particularly if conversion results in a need for public investment to upgrade or replace roads, water supplies, and sewers.

Private recreational developments may also create social problems resulting from the impact of outsiders on the local culture and the way such developments interfere with the public's use of valuable recreational environments.

Finally, the study analyzes and recommends local, state, and Federal legislative mechanisms for mitigating the various adverse impacts that the developments may generate.

The results of the study will be published by CEQ and HUD. One volume will summarize the findings of the study, and a second volume will be a handbook for use by local officials in reviewing and evaluating the probable impacts of proposed projects.

APPENDIX F

15 U.S.C. § 1705

(12) such other information and such other documents and certifications as the Secretary may require as being reasonably necessary or appropriate for the protection of purchasers.

§ 1706. Effective date of statements of record and amendments thereto—Thirtieth day after filing or such earlier date as determined by Secretary; consolidation of subsequent statement with earlier recording

(a) Except as hereinafter provided, the effective date of a statement of record, or any amendment thereto, shall be the thirtieth day after the filing thereof or such earlier date as the Secretary may determine, having due regard to the public interest and the protection of purchasers. If any amendment to any such statement is filed prior to the effective date of the statement, the statement shall be deemed to have been filed when such amendment was filed; except that such an amendment filed with the consent of the Secretary, or filed pursuant to an order of the Secretary, shall be treated as being filed as of the date of the filing of the statement of record. When a developer records additional lands to be offered for disposition, he may consolidate the subsequent statement of record with any earlier recording offering subdivided land for disposition under the same promotional plan. At the time of consolidation the developer shall include in the consolidated statement of record any material changes in the information contained in the earlier statement.

Incomplete or inaccurate statements of record

(b) If it appears to the Secretary that a statement of record, or any amendment thereto, is on its face incom-

plete or inaccurate in any material respect, the Secretary shall so advise the developer within a reasonable time after the filing of the statement or the amendment, but prior to the date the statement or amendment would otherwise be effective. Such notification shall serve to suspend the effective date of the statement or the amendment until thirty days after the developer files such additional information as the Secretary shall require. Any developer, upon receipt of such notice, may request a hearing, and such hearing shall be held within twenty days of receipt of such request by the Secretary.

Amendment of statement of record

(c) If, at any time subsequent to the effective date of a statement of record, a change shall occur affecting any material fact required to be contained in the statement, the developer shall promptly file an amendment thereto. Upon receipt of any such amendment, the Secretary may, if he determines such action to be necessary or appropriate in the public interest or for the protection of purchasers, suspend the statement of record until the amendment becomes effective.

Suspension of statement of record containing untrue statement or omission to state material fact; notice and hearing; termination of order of suspension

(d) If it appears to the Secretary at any time that a statement of record, which is in effect, includes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, the Secretary may, after notice, and after opportunity for hearing (at a time fixed by the Secretary) within fifteen days after such notice, issue an order suspending the statement of record. When such statement has been amended in

accordance with such order, the Secretary shall so declare and thereupon the order shall cease to be effective.

* * *

§ 1707. Information required in property report; use for promotional purposes

(a) A property report relating to the lots in a subdivision shall contain such of the information contained in the statement of record, and any amendments thereto, as the Secretary may deem necessary, but need not include the documents referred to in paragraphs (7) to (11), inclusive, of section 1705 of this title. A property report shall also contain such other information as the Secretary may by rules or regulations require as being necessary or appropriate in the public interest or for the protection of purchasers.

* * *